NOISE AND THE LAW

Tort of Private Nuisance

Nuisance law dates right back to medieval times when its main purpose was to eradicate the nasty and unpleasant elements of everyday life such as stinking privies! The tort has continued and developed as a form of legal action with which to protect the environment. In this context, the protection of property owners from noise nuisance has been well refined. Victorian authorities are littered with private nuisance cases concerned with the stopping noise nuisance from all manner of things; from steam hammers through to the playing of fairground organs for eight hours a day.

The first issue is whether you have a legal interest in land. The tort of private nuisance is basically a legal means to protect the landowners enjoying the comfort of their property. The legal position is that freeholders, leaseholders, tenants and those with reversionary interest in land can instigate legal action. Anything less than this is incapable of instigation. So those who have a licence to stay in property, lodgers, hotel guests, residents of aged persons homes and even hospital patients have no right to take action.

A further issue for prospective complainants is whether or not your particular circumstances could be held as a noise nuisance. It might be safe to assume that some of the more obvious sources of noise could be actionable but the common law is far from prescriptive. Unfortunately the common law is built up by an unwieldy structure of nuisance cases that have been layered on top of each other. It might be a matter of chicken and egg. Your own particular problem might only be held as a private nuisance after an examination by the court.

The determination of your action is largely down to the notion of reasonableness. Has there been a degree of reasonableness by all parties. To assess this the court looks at a number of issues.

Character of the Area: Do you reside in an area where there is already a high level of noise? The noise environment is an important factor. Those residing in a leafy village would expect a high degree of quietness to protect the rural characteristics of the area. In the light of the Gillingham v Medway case, it is important to establish from your local planning department whether planning permission has been granted for premises that create noise. In this case it was the operation of a port. The court dismissed the actions of local residents who complained of the noisy comings and goings of port traffic.

Social Utility: You must look at the usefulness of the person or premises that make the noise. It might be futile to take legal action, for instance, against the blaring klaxons of fire engines if you live in or about a fire station. Unfortunately, the trend of the common law in today's noisy contemporary society is for people to 'give and take.' We must put up with a certain amount of noise in our lives. Nonetheless, this does not mean that we must tolerate unreasonable noise. If you feel that the person or premises creates the noise for the sake of creating noise, such as a public house that turns up the jukebox volume to attract more customers, then this might strengthen your case.

Duration of the Noise: Basically, the longer your have endured the noise nuisance then the stronger your case. The common law does not give a definitive time limit on how long the noise has to go on to become a nuisance but it must be more than temporary. However, even if it is temporary, such as road works, the undertaker must use all reasonable care and skill to avoid any nuisance to nearby neighbours.

Malice on the part of the Noise Creator

Noise can be a potent weapon with which to annoy. We have perhaps all heard of someone suffering from 'neighbours from hell' situation where the neighbour will intentionally turn up the hi fi or whatever he can to create noise to disturb the comfort of his or her neighbour. If you have evidence of the defendant using noise deliberately to annoy you this can be of paramount importance. Remember, it does not necessarily have to be loud noise. There was a case of statutory nuisance in Leicester where a person continually played a Whitney Houston to upset the neighbours. So if your neighbour has some imagination and emits unusual or unexpected noise to aggravate you then this might still be capable of being an actionable nuisance.

How sensitive are you to Noise? The legal term is hypersensitivity and the principle is that if a complainant is abnormally sensitive to nuisance then he is unable to complain if the activities of the defendant are not extraordinary. In effect, if you are highly vulnerable to noise then the defendant must be engaged in activity that is of an unusual nature to make any progress. This is a complex and confusing area of the law. For instance, you might be particularly sensitive to low frequency noise that is created by machinery in a local factory. The fact that the factory is engaged in an ordinary manufacturing process might completely defeat your action.

A further problem lies in whether or not you have suffered harm. The law is fairly certain where you suffer from a diagnosable physical problem, such as deafness or tinnitus. However, where noise nuisance is concerned the law is still in its infancy where psychological illness occurs as a direct result of the noise nuisance.

There are defences that a defendant to a private nuisance action can rely on. The noisemaker might rely on the defence of prescription. In essence, if the noisemaker has been making his noise for 20 years and you have full knowledge of this then the law deems that you have accepted this nuisance. However, if there is any change in the noise, your neighbour might have built a noisy workshop for instance, this might dissolve this defence.

Another defence is that of statutory authorisation. Many noisy activities are sanctioned by parliament. People who maintain the road, are for instance, carrying out their statutory duties laid down by parliament. But this does not mean that this is a licence to create as much din as possible. There is an important common law rule that requires people who carry out statutory duties to use al reasonable diligence and take reasonable steps to prevent their operations being a nuisance.

Public Nuisance

So far we have discussed the law between neighbouring properties. There is also the problem of noise that emanates from the public domain. As you aware, noise has no respect for garden walls or fences. A good example would be a busker playing loud trombone near to a business or indeed a home. If you are affected by 'public' noise, there are two courses of action.

Firstly, you might be able to instigate a common law tort action for the 'special damage' that you have suffered over and above the harm that has been inflicted on other members of the public. So if the busker plays his trombone outside your home, his noise clearly has more impact on you than other residents.

Secondly, you might be able complain of a public nuisance that affects a number of people not just yourself. The majority of public nuisance cases have been concerned with obstruction. The 'cellar flap' cases where people are harmed by falling over obstructions. However, public nuisance can be used for all manner of harmful activity. In the case of Sykes v Holme, glue was considered by the court to be a public nuisance. Recently, public nuisance has been used to prosecute organisers of noisy rave events. Public nuisance has, therefore, been re-vitalised as a legal means to defeat the noisy.

Remember that Public Nuisance is a crime and it might be the case that your local police decide to institute proceedings for this offence.

The Noise sufferer and the law

However, people should not suffer in silence (or should that be bedlam). The law offers some form of protection against those who deliberately or unwittingly create noise. We only have to examine the increase in complaints to the local environmental health departments to show that people want something done. The government has for it's part been increasingly mindful of the social effects of noise on the general public. For instance, if people are unable to get a good nights rest they might not be able to perform at work the next day. The Noise Act 1996 was introduced to outlaw those who have little or no respect for peace and quiet from 11pm to 7am. It is surprising how far the law extends where noise is concerned. Statutory law can cover a whole host of noise nuisance. From the loud speaker to construction sites. The common law of nuisance can find that the most unlikely noise is capable of breaking the law. The case of Mc.Kenzie v Powley even found that the 'continuous blare' of the Salvation Army in the morning constituted a nuisance.

Environmental Protection Act 1990 - England and Wales

This Act follows a long line of Public Health statutes that are concerned with statutory nuisances. Section 79(1)(g) of the Act includes 'noise emitted from premises so as to be prejudicial to health or a nuisance.' Although the Act does lay down what type noises constitute a nuisance it does, however, include vibration. Furthermore, the noise does not have to be existing noise, the law also covers noise, which is expected or recurs.

The Act limits noise, which is created in any premises, on land and in any vessel. 'Land' would necessarily include a back garden. It does not include noise that is created in the street or in the public domain.

The Act lays down two separate procedures for dealing with noise offenders. It allows the local authority i.e. environmental health officers, to investigate complaints of statutory noise nuisance. It also allows under section 82 for you as private individual to take the matter to the local magistrates court.

Local Authority Action

The Environmental protection Act 1990 and the Control of pollution Act 1974 gives the local authorities in England and Wales, and Scotland respectively the power to investigate complaints of statutory noise nuisance. At first instance, the environmental health officer (EHO) will try to establish if the noise constitutes a statutory nuisance. He might be satisfied that the nuisance exists on just hearing the noise. This might take a few visits. He might install special equipment in your home which can record the noise. If he or she is satisfied then he will initiate a process of resolution. Normally, the EHO will try to resolve the matter informally. A word of advice or caution. Sometimes noise issues can be the result of a misunderstanding or ignorance of the law.

If this informal approach fails, then the EHO can serve an abetment notice on the noise creator or the person who owns or occupies the premises from where the noise comes from. The notice states that the noise nuisance must be abated and will contain specific measures to be taken by the noise creator. The EHO has the discretion to draft the notice in the form that would suit the particular circumstances. For instance, if is a public house jukebox, the EHO might set a maximum noise output in decibels for the equipment.

If the noise creator fails to comply with the notice he commits a criminal offence, which can be prosecuted in the magistrates' court or in the Sheriff Court.

Furthermore, if the abatement notice has not be complied with the EHO's has the potent statutory power to abate the nuisance and do whatever may be necessary in the execution of the notice. This power is at the discretion of the EHO and the most obvious expression of this power would be the removal of the noise making equipment. This power can be applied in conjunction with initiating court proceedings.

If the matter proceeds to court be prepared for the defence of 'best practicable means.' In both jurisdictions, the noisemaker can argue that in the course of any trade or business the best practicable means have been used to prevent or counteract the noise. So try to find if the noisemaker is doing his best to abate the noise. It might be the case that he uses machinery or equipment that has 'up to the minute' noise suppression devices. Remember that in some instances technology might not be able to defeat some noise nuisances.

The penalties for breach of the abatement in England and Wales, if the offence is committed on any industrial, trade of business premises the fine can be up to £20,000. on any other premises, say a house, the person can be fined up to £2,000 with a rolling penalty of a further fine of up to £200 for each day on which the offence continues after the person is convicted.

The local authority has also the legal option of bypassing the magistrates' court and applying for an injunction in the High Court where it considers that summary proceedings would be ineffective. That means that the High Court can issue an order completely banning the noise.

Criminal Justice and Police Order Act 1994

The Criminal Justice and Police Order Act 1994 is the principal legislation available to tackle raves and is enforced by the Police. This legislation gives the Police powers to stop or prevent raves, i.e. unlicensed open air gatherings of 100 or more persons (whether or not trespassers) at which amplified music is played during the night causing serious distress to the inhabitants of the locality.

Powers exist to remove persons attending or preparing for raves, to enter land, seize sound generating equipment and stop persons from proceeding to raves.

A police officer of at least the rank of Superintendent, who reasonably believes any of the following:

- that two or more persons are preparing for the holding of unlicensed open air gathering, or
- ten or more persons are awaiting the commencement of, or attending, unlicensed open air gathering, or
- 100 or more persons at which amplified music (which includes repetitive beats) is
 played during the night and is, by reason of its loudness, duration and the time at
 which it is played, likely to cause serious distress to the inhabitants of the locality.

Individual Action

Although the local authority might not be in a position to institute legal action, this is not the end of the road. You can take your case to the local magistrates court. The procedure is initiated by giving the noise creator a warning, the Act does not oblige you to do this but it might be in the interests of fairness to let the offender know you are unhappy. If this fails, then under the Act you MUST give at least 3 days notice in writing to the noise creator that you intend to take the matter to the magistrates court. You should outline the nature of your complaint in the letter and that you are acting under the provisions of section 82. It might be appropriate to either hand the letter personally to the person or to send it by post, preferably by recorded delivery.

If this does not resolve matters then you turn your attention to the magistrates' court. The correct procedure is to contact the Clerk of the Court. Tell him that you wish to instigate an action under section 82. He will arrange a time and date for you to see the magistrates when you can explain your case. If the magistrates consider that you have a case then a summons will be issued requiring the noise creator to attend court and answer your allegations. The fact that you bring you own action does not stop you having a solicitor or a representative present.

Please note that the defence of 'best practicable means' still applies to a section 82 action.

If you win your case, the courts have the power to order the noisemaker to abate the noise. The order will contain special provisions, including the execution of any necessary work, abating and/or an order prohibiting recurrence and any necessary works to secure this prohibition. The order MUST be complied with. If he fails to comply without reasonable excuse with the order, commits a criminal offence. The court can fine the noisemaker for this breach.

It can be costly taking your action to court. In England and Wales, the magistrates' court has the power to award you reasonable costs against the noise offender if the court finds that the noise nuisance existed at the time you made your complaint. However, the magistrates also have to power to make you pay the costs of the other party. This might happen if you lose your case.

Noise Act 1996

This piece of legislation was largely brought out in response to the growth of acid house parties and the like being held in residential properties. The Act outlaws noise from a dwelling between 11 pm and 7 pm. Although the Act does not specify what types of noise are offensive, it does give the secretary of state the power to lay noise limits in terms of decibels. You must be present in a dwelling during these hours in order to complain.

If you complain, the local authority must take reasonable steps to investigate your complaint. If, after investigation the environmental health officers are satisfied a noise nuisance exists AND if measured would exceed the prescribed decibel limit, they can serve a warning notice to the offender. The warning notice only remains 'live' until 7 am in the morning.

If a person disregards the notice and continues emitting noise, the investigating officer can return to measure the noise to see if it exceeds the permitted level. If it does the offender commits an offence. The investigating officer has to important legal devices with which to try and stop the noise. He can serve a fixed penalty on the person responsible for the noise requiring him to pay a fine. More importantly, the officer can enter the premises and seize and remove any noise making equipment. The Act does not define this equipment. It can be any conceivable thing that emits excessive noise. Once removed, the officers can apply to a magistrates court to have the equipment forfeited.

The Noise Act 1996 contains no nonsense measures to control noise. However, your local authority has to adopt the Noise Act. So before you consider taking action check that your local authority has actually implemented the Act.

Protection from Harassment Act 1997

On the heels of the Noise Act is another statutory measure designed by the government to make the neighbourhood as safer place. The Act is more or less in response to the escalation of the problem caused by 'neighbours from hell.' Noise can be a powerful means to harass one's neighbour.

Section 1(1) makes it an offence for a person to pursue a course of conduct which amounts to harassment of another and which he knows or ought to know amounts to harassment of another. The offence can take place either in public or in a private place. A further advantage is that any complaints of 'criminal harassment' have to be handled by the police. The police have the power to arrest those who commit criminal harassment.

The only interpretation in the PFHA 1997 of any significance is the definition of 'course of conduct.' This must involve conduct on at least two occasions. This does not necessarily mean that both types of conduct must be noise related. The first might be the playing of excessively loud music; the second might be depositing excrement on one's property, for instance. There does not have to be a definitive time span between both occasions. There does not appear to be a limitation on the time between first occasion and second occasion. The police might be able to return in say a week's time, and, if there is evidence of the second course of conduct, arrest offenders.

The determination of the government in trying to get to grips with bad neighbours and the like might be shown in the penalties that are available to the courts. A person can, upon summary conviction, receive up to 6 months imprisonment. Of course, this might mean that after an offender has been released from prison he can just continue where he or she has left off. The Act makes provision for this. On conviction, the prosecutor may apply to the court to invoke a restraining order against the offender prohibiting any conduct specified in the order. Any breach of the order is an arrestable offence where, upon further conviction, makes the offender liable to a term of imprisonment of up to 5 years on indictment.

Moreover, the PFHA 1997 allows the victim of an actual or apprehended breach of section 1 to pursue a civil claim for damages for '(among other things) any anxiety caused by the harassment or any financial loss'. This is an important legal development as the Act expressly recognises the fact that continual harassment whether by noise or otherwise can induce a nervous, often severe, reaction.

Public Disorder

We often associate public disorder with images of large-scale demonstrations or even riots. However, public order law can also be effective in trying to abate noisy occurrences, such as a gang of rowdy youths, noisy drunks and the like. The Public Order Act 1986 now governs the conduct of persons in public places, whether they are drunk or not. It is a strategic piece of legislation in terms of constitutional freedom, particularly the freedom to express political sympathies or otherwise. The 'otherwise' can govern public conduct associated with a catalogue of anti-social activity from football hooliganism to the mass picketing of industrial sites. For our purposes, much of this anti-social behaviour creates noise. It is difficult to find a situation where there is a gathering of people and the emphasis is on quietness. Funerals or remembrance parades are perhaps the last preserve of tranquil gatherings. Section 5(1) of the Public Order Act 1986 creates the offence if: -

"A person uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, OR displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby."

Although the Act might appear public in context it does extend to private places. However, the Act creates an important exception where dwellings are concerned. It does not cover offending behaviour that is carried out by a person inside a dwelling where you, the complainant, resides in that dwelling or another dwelling. In effect, you cannot complain against your neighbour.

One of the advantages of this Act is that appears to deal with those who are subjected to the noise created by disorderly persons. A sudden outburst of noise, like a firework, might cause

alarm. The psychological impact of the noise might be

sufficient to distress a person.



The police have the responsibility for dealing with people who are disorderly. They can arrest those who breach this measure. However, before the police can use their power of arrest they must have warned the offender to stop acting in a disorderly manner.

Loudspeakers

Amplified sound can often be the source of irritation. Section 62 of the Control of Pollution Act 1974 lays down certain restrictions for the use of loudspeakers in the public domain. Loudspeakers are banned from 9 p.m. in the evening to 8 a.m. next morning. So if your neighbour wants to use loudspeakers contained in a large portable music player in the street in the late evening he is prohibited. However, the Act does make some common sense exceptions, which allow a loudspeaker to be used for emergency purposes. The use of a loudspeaker by the police or fire service.

Although the act authorises the use of a loudspeaker during the day, where the loudspeaker is used to advertise any entertainment, trade or business it becomes unlawful. However, the Act makes an exemption for those persons using a loudspeaker to sell perishable food between midday and 7pm. The most notable example is the mobile ice cream seller. This exemption does not mean that the loudspeaker can be used irresponsibly. This exemption becomes unlawful if the loudspeaker gives reasonable cause for annoyance in the neighbourhood.

Fireworks

It is now become popular to mark a celebration with the setting off of fireworks. Notwithstanding the noise impact sudden loud noises can have on the elderly, infirm and indeed animals, the law is arguably very weak where the control of these potentially harmful devices is concerned. Section 80 of the Explosives Act 1875 makes it a summary offence to throw or fire fireworks on a street or public place.

Street Trading

Perhaps it is an indication of the strength of the economy when we see a proliferation of street traders. Some are very competitive and to compete some create noise as means to attract custom. We have all seen the market trader with the microphone slung round his neck barking out his wares. The local authority has the authority under the Local Government (Miscellaneous Provisions) Act 1982 to issue street trading licences. The licence allows a person to trade in a street or public place, such as an outdoor market. The licence might contain conditions relating to the creation of noise. If you annoyed by noisy street trader contact your local authority. They might have a department that deals with street trading. If the market is permanent, there is often a Market Inspector present. If so, it might be wise to address your complaint to him.

Takeaway Outlets

The late night takeaway food business has now extended beyond the ubiquitous street corner fish and chip shop to a large number of outlets catering for virtually every conceivable taste. Although this might be convenient, one of the problems of such outlets is that people might congregate outside and make noise. Unfortunately, younger people are attracted to the bright lights and modern design of takeaway food premises. Nonetheless, the Local Government (Miscellaneous Provisions) Act 1982 gives the local authority the power to shut a food takeaway shop where there is evidence from the public of disturbance. Section 4(1) of the Act provides:

"a district council may make an order (in this part of the Act referred to as a 'closing order') with respect to any premises in the district where meals or refreshment are supplied for consumption off the premises, if they are satisfied that it is desirable to make such an order to prevent residents in the neighbourhood of the premises being unreasonably disturbed either by persons resorting to the premises or by use of the premises for the supply of meals and refreshment."

Construction and Maintenance Noise

It is probably a rare sight these days not to find some stretch of road in the neighbourhood being dug up, repaired or maintained. All manner of public utilities are constantly engaged in opening up the road or pavement and doing what is necessary to maintain vital supplies of water, electricity, etc. To a lesser extent, there is the noise that is created by the building of new properties or the repair or renovation of some existing buildings. Although the noise might be transient or there is a definitive time scale for the work to end, it does not necessarily mean that the undertaker can act without consideration.

By virtue of Section 60 of the Control of Pollution Act 1974, the local authority has control over the following types of work:

- (a) the erection, construction, alteration, repair or maintenance of buildings, structures and roads;
- (b) breaking up, opening or boring under any road or adjacent land in connection with the construction,
 - inspection, maintenance or removal of works;
- (c) demolition or dredging work; and
- (d) (whether or not also comprised in paragraph (a), (b) or (c) above) any work of engineering construction.

The local authority has the discretion to lay down conditions for the work. The times that the work commences and ceases, for instance. However, section 60(2) places a legal obligation on the local authority to consider the need to protect persons in the locality from the effects of noise. It might be the case that the local authority has determined the maximum amount of noise that can be created by the work.

If you feel that the noise coming from the work is unreasonable check with your local authority to see if a Section 60 notice is in existence and if there any stipulations regarding noise. It might also be useful to peruse the code of practice for noise control on Construction and Open Sites (BS 5228). This code can be obtained from the British Standards Institute, sales department, Linford Wood, Milton Keynes, MK14 6LE. Remember that the companies undertaking such work are very responsible and have public relations departments that might try to find a way to minimise the noise output.

Noise and Statutory Nuisance Act 1993

It might be the case that the noise in the public domain might not come form such works. There are probably a thousand and one sources of noise that can be heard in public. A neighbour repairing cars outside his home, a refrigeration until on a lorry going all night, the faulty car alarm, even a busker playing an out of tune trombone.

The Noise and Statutory Nuisance Act 1993 extends the statutory nuisance provisions of the Environmental Protection Act 1990 to:

"Noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street."

This definition can cover a whole host of noise making things. The only exception to the Act is the noise made by traffic or by a political demonstration or a demonstration supporting or opposing a campaign or cause.

The Act appears to be quite comprehensive in where the noise is created. A 'street' for the purposes of the Act includes a highway and any other road, footway, square or court that is for the time being open to the public. This definition would suggest that the public area is more or less of an urban character. It is unsure whether the Act would cover a park or village green.

However, bear in mind that any such noise might be subject to the defence of 'best practicable means'. So if, for instance, a person uses a portable generator to provide electricity, the generator he uses might be best that the current state of scientific knowledge has to offer.

Motor Vehicles

At first instance it might seem an impossible task to reduce the noise made by road traffic. Imagine trying to control the noise made by a busy motorway. Nonetheless, attempts been made to reduce the impact of road noise. The European Union, for instance, has through various directives, which have been implemented by the UK government, attempted to quieten the noise made by newly manufactured motor vehicles. To a lesser extent, you as an individual might be in a position to do something about those drivers who intentionally use their motor vehicles to disturb the peace.

Road traffic law creates specific offences relating to noise which include 'the use of a motor vehicle on a road in such a manner as to cause excessive noise which could have been avoided by the exercise of reasonable care on the part of the driver.' The driver or owner must also ensure that the silencer is working in an efficient manner otherwise he commits an offence.

The idling of a vehicle engine or machinery, such as a generator attached to a motor vehicle can be an irritating source of nuisance. This is often known as quitting. The driver leaves the motor vehicle stopped and unattended with the engine running. However, there are exceptions to this offence if there is a qualified driver aboard the vehicle, the vehicle is stuck in traffic, the machinery has deranged or the machinery, such as a tail lift, is necessary to carry out the purpose of the vehicle.

Where motor horns are concerned, it is an offence to operate a motor horn when the vehicle is stationary unless there is danger from another vehicle. Furthermore, a moving vehicle cannot sound its horn in a restricted road between 11.30 pm and 7 am. A restricted road is lit by lamps placed not more than 200 metres apart. The majority of urban roads are, therefore, restricted roads.

We have all probably been startled by those drivers who show off by sounding a 'Colonel Bogey' type horns. These types of devices are strictly prohibited on vehicles first used after 1st August 1973. Only emergency vehicles, such as the police, may use a siren, bell, gong or two-tone horn.

Driving without reasonable care or consideration for other road is perhaps a 'catch all' offence for those who use vehicle noise to alarm or distress other persons using the road. There might be circumstances in which a driver has a complete disregard for other drivers and pedestrians. The continual revving of a loud engine is perhaps one instance.

The police have the responsibility for prosecuting drivers who allegedly commit these offences.

A further way an individual might use the law to minimise the impact of traffic noise is by traffic management. Drivers using small streets as 'rat runs' to avoid congestion perhaps becoming a common feature of urban life. The local authority is empowered under the Road Traffic Regulation Act 1984 to secure the expeditious, convenient and safe movement of vehicles. This Act has been supplemented by the Road Traffic Reduction Act 1997, which requires a local authority to reduce the level of road traffic. The result of these two pieces of legislation is various schemes, such as 'sleeping policemen' designed to slow vehicles down. If you feel that the level of road traffic noise is far to high contact your local councillor or local authority traffic management section. (In Scotland, the regional or island council) Remember, that a number of local residents might have more influence than a single individual. Your own ideas of how the traffic can be controlled might be most welcome.

Aeroplanes

The main thrust of the legal measures to curb aircraft noise is largely the responsibility of the International Civil Aviation Organisation, which has progressively reduced the amount of noise a particular type of aircraft can create. This has been supplemented by provisions contained in the Civil Aviation Act 1982, which allows airports to fine noisy aircraft. This same also gives a legal right to individuals who suffer some loss due to the movement of aircraft.

Section 76 of the Act allows an action for any nuisance or trespass caused by the aircraft. However, the section the action will no succeed if the aircraft flies at a height above the ground, which having regard to wind, weather and all the circumstances is reasonable; the aircraft is not being flown in a dangerous manner and the aircraft complies with any provision of an Air Navigation Order. This measure might not meet with the routine flights to and from airports, which are strictly monitored by air traffic control. However, it might be appropriate for smaller aircraft, such as microlight aircraft, which appear to fly far too low.

Section 76(2) goes on to cover 'material loss caused to any person or property on land or water, or by a person in, or an article, animal or person falling from an aircraft while in flight, taking off or landing." This measure would appear to cover a piece of ice falling from an aircraft damaging one's home. However, the law is far from certain as to whether noise would create liability. A sonic boom that damages roof tiles, for instance, is a case in point but has never been legally challenged.

By law, an airport must allow the public to have their say in running the airport. This is facilitated by an Airport Consultative Committee. Check if your local airport has such a committee in existence. It is not unusual for a local councillor to be a member of the committee. If you do feel aggrieved at what you perceive as noisy operations try to contact the committee or one its representatives.

No doubt we have been on holiday or touring a mountainous part of the country when suddenly a military jet aircraft suddenly overflies. Of course, the defence of our country can outweigh the momentary loud roar. However, if your loss, injury or damage, is substantial - usually the frightening of livestock - you can submit a claim to the Ministry of Defence, Claims Branch, PL(LS) Claims, First Avenue House, high Holborn, London WC1V 6HE.

Boats

The use of motor powered watercraft on our normally tranquil lakeside environments highlights one of the environmental dilemmas we face in our populous country. Someone's pleasure is also someone else's annoyance. The Countryside Act 1968 has made some effort to preserve the lakeside environment from excessive noise. Section 13(1) of the Act authorises a local planning authority whose area includes the whole or any part of a National Park to make bylaws to prohibit or restrict traffic of any description on any lake in a national park.

If you are disturbed by excessively noisy speedboats, try to establish if the local planning authority have imposed a bylaw, such as a speed limit. If so, then attempt to identity the offending craft. In some instances, the craft has to be registered with the authorities and display a registration number.

We now live in a society in which people either have the time or the money (or both) to indulge in leisure pursuits. Of course, this might be regarded by many as a reward for their labours. Some forms of entertainment or leisure are traditional and in the case of past times such as bowling, chess, snooker, quietness is a necessary requirement of the game. However, some like their entertainment loud or indulge in pursuits, such as car rallying, which are inherently noisy. It would seem that there is an ever-increasing need to create noise as part of the overall entertaining experience. Go to any fair, for instance, and you are bombarded with a cacophony of noise. However, if you feel that you can no longer tolerate noise from entertainments, the following sources of law might offer some help to you.

The Entertainment

Licence Schedule 1 of the Local Government (Miscellaneous Provisions) Act 1982 makes provision for the licensing of public entertainment. The legislation gives the local authority the power to prescribe conditions for the licence. The notice might contain, therefore, conditions that limit the noise emitted by the entertainment. Section 1(1) - (3) provides

- (1) An entertainment to which this paragraph applies shall not be provided in any place except under and in accordance with the terms of a licence granted under this paragraph by the appropriate authority.
- (2) Subject to sub-paragraph (3) below, this paragraph applies to public dancing or music or any other public entertainment of a like kind.

- (3) This paragraph does not apply -
- (a) to any music (i) in a place of religious worship; or (ii) performed as an incident of a religion meeting or service;
- (b) to an entertainment held in a pleasure fair; or
- (c) to an entertainment which takes place wholly or mainly in the open air.

The Act is only aimed at venues. It is not a personal licensing system. Those who entertain in the public domain are a notable exception to the Act. The various acts of street entertainers found in many city centres might still be regarded as entertainment though. Moreover, those who reside next to land where a pleasure fair traditionally visits or is a permanent feature could argue that this statutory exception is an important omission.

Where any entertainment is a public musical entertainment and takes place on private premises or public land wholly or mainly in the open air, the local authority must first resolve to invoke paragraph 3 and 4 of Schedule 1 to come into force on a day specified in the resolution. For the purposes of licensing such events, paragraph 3 identifies the activities subject to the Act. The paragraph stipulates that,

- (a) an entertainment is musical if music is a substantial ingredient;
- (b) land is private if the public has access to it (whether on payment or otherwise) only by permission of the owner, occupier or lessee;

This paragraph does not apply -

- (a) to a garden fete, bazaar, sale of work, sporting or athletic event, exhibition, display or other function or event of a similar character, whether limited to one day or extending over two days or more days; or
- (b) to a religious service or meeting. merely because music is incidental to it.

If the local council invoke these provisions, this allows the local authority to grant an entertainment licence in respect of one or more particular occasions as may be specified in the licence.

The general tenet of the 'outdoor' entertainment licence is the control of open-air musical concerts. Where the entertainment is a mass spectacle, chaos could ensue if restrictions are not placed on the conduct of the entertainment. Section 4 of the Act requires the imposition of any terms or conditions to ensure the outdoor entertainment complies with the following purposes.

- (i) for securing the safety of performers at the entertainment
- (ii) for securing adequate access of emergency vehicles.
- (iii) for securing the provision of adequate sanitary appliances.
- (iv) for preventing persons in the neighbourhood being unreasonably disturbed by noise.

Paragraph (iv) is of significance to the potential noise sufferer. The local authority might stipulate in the licence the allowable decibel level for the noise output. The open-ended nature of the terms and conditions allows practical resolutions. This could even go a far requiring the public address speakers being pointed away from residential areas or even

restricting the number of amplifier speakers. Perhaps the distinction that outdoor entertainment is subject to the priorities of section 4(b) reflects the potential of outdoor noise intruding into nearby premises. It is all within the discretion of the EHO, there are no fixed parameters for noise limitation, such as an upper noise output level.

In England and Wales, section 2 of the Schedule 1 of the LG(MP)A 1982 extends licensing to what is termed 'sports entertainment.' This is defined as any sporting event to which the public are invited as spectators. The event can be a one-off or a permanent occurrence. An exception is created by section 2(2) where the sporting event that constitutes an entertainment is not the principal purpose for which the premises are used on that occasion. A further difficulty might be encountered by the definition of 'sport.' Sport includes, 'any game in which physical skill is the predominant factor and any form of physical recreation which is also engaged in for purposes of competition or display, except dancing (in any form)' Some forms of sport might not fall within this definition. Hunting, for example, which causes a hue and cry when animal are hunted or requires the firing of noisy weapons to kill or maim the animal, is a matter of intense debate as to whether it is a sport.

A distinction might be drawn between paragraph 1 and 2 provisions, where a non-sporting event is held at sporting premises. In some instances, musical entertainers might perform at a sporting venue that is wholly open to the air. A rock group performing at a cricket ground is a prominent example. In this case, the promoter would have to seek an entertainment licence under paragraph 1. No premises can be used for 'sports entertainment' except in accordance with the terms and conditions of an entertainment licence. The term 'premises' means, "any permanent or temporary building and any tent or inflatable structure and includes a part of a building where the building is as sports complex but does not include a part of any other building."

The measure would necessarily include sport that is contained within premises For instance, football, rugby, cricket grounds. It is irrespective of whether part or all of the premises are open to the air. However, the definition would appear to exclude sports that are held on a circuit or course. Premises, such as a grandstand only form a small part of the actual course. Very noisy sporting events, such as Formula 1 motor racing might escape the provisions of the LG(MP)A 1982. Some sports, such as motor rallying, have extremely long courses and travel through both town and country. Licensing of such events might be impossible.

Licensed Premises

It might be a sign of the times that the idea of public house just having a piano and a number of patrons gathered round it singing has been replaced by all kinds of novelties to entice drinkers inside. The brewing industry is extremely competitive and customers are often attracted by the entertainment the hostelry offers. Some of this entertainment is noisy. The Laser Karaoke shows, for instance. However, premises that sell intoxicating liquor must be licensed (Justices' Licence) by the Licensing Justices of the local magistrates court. If you feel that the premises are not being run properly, it is far too noisy, for instance, this might be grounds for you to object to the renewal of the licence. If you wish to oppose the licence you must give written notice of your intention to the licensee and the clerk to the Licensing Justices at your local magistrates court.

The Licensing Justices can also authorise licensed premises to open beyond last orders. A Special Hours Certificate can allow the premises to remain open until the early hours of the morning. The noise of the premises and/or the disorderly behaviour of people leaving the premises can have a significant impact on the pace and quiet of a neighbourhood. Although, the law does not give you a personal right to oppose the opening (or permitted) hours, you can make your feelings known to the police. The police are responsible for the regulation of licensed premises. If the police consider that the operation of the licensed premises is detrimental to the neighbourhood they might seek to modify or even try to revoke the extension to the permitted hours.

Late Night Refreshment Houses Act 1969

The licensing provisions of Late Night Refreshment Houses Act 1969 might be more disposed to the decade in which it was enacted. The social profile of this decade was marked by the position of the coffee bar, milk bar and café as meeting places for people, particularly young persons. Noise was part of the attraction of such premises. The jukebox and pinball machine were ubiquitous features. In some cases, the premises attracted the less than desirable. Noisy motorcycle gangs, for instance, would congregate in the car park of some premises.

The LNRHA 1969 has, however, been rejuvenated by the proliferation of fast food outlets. It is now virtually impossible to walk any High Street without finding a fast food restaurant. Some entrepreneurs behind such businesses seek to attract the youthful market. Although many of the corporate enterprises do not rely on the playing of very loud amplified music to entertain the customers, the premises are responsible for 'collateral noise' created by the gathering of young people in close proximity of the premises.

For the purposes of the LNRHA 1969, a late night refreshment house is,

"a house, room, shop or building kept open for public refreshment, resort or entertainment at any time between the hours of 10 p.m. and 5 a.m. the following morning, other than a house, room, shop or building which is licensed for the sale of beer, cider, wine and spirits."

The local authority must license a person who keeps such a premises. The local authority has the power to impose conditions on the refreshment house. Although this power is restricted to the operation of the house after 11 p.m., it can, if necessary, prohibit opening between 11 p.m. and 5 a.m.

The Shabeen

Shabeen might not be a familiar term to you. It is a term to denote parties that are held in private residences where people pay to get in. Today, they might be termed 'pay parties' 'house parties' or 'raves.' However, one common feature is the generation of noise to get the party going. The Private Places of entertainment Act 1967 outlawed such parties unless the local authority licenses it. Section 2(1) provides that, 'no premises in an area to which this act applies shall be used for dancing, music, or any other entertainment of the like kind which,

- (a) is not a public entertainment; but
- (b) is promoted for private gain,

Except under and in accordance with the terms of a licence granted under this act by the licensing authority.

Bylaws

Your local authority might have implemented certain bylaws, which are designed to prevent noise. Section 235(3) of the Local Government Act 1972 gives the local authority the power to make bylaws for 'the good rule and government of the whole or any part of the district or borough and for the prevention and suppression of nuisances.' It might be the case that your area is covered by a bylaw that aims to reduce noise nuisance. Examples of bylaws made by local authorities include noisy street trading, music near hospitals, bird scaring devices and barking dogs. The bylaw can be tailored to suit the characteristics of an area.

One example is of an authority trying to protect the seaside environment by prohibiting the playing of portable music player on a beach. Although the bylaw is more of an instrument for controlling public noise, it might be relevant if you reside or work near a public place, such as a park, which is subject to a bylaw. Check with your local authority if a bylaw exists in or near your home.

Codes of Practice

The Control of Pollution Act 1974 allows the secretary of state to issue codes of practice that are aimed at reducing noise. Only three codes of practice have ever been issued by the government under section 71 of this Act. They relate respectively to noise from ice cream vans, audible intruder alarms and model aircraft. The codes contain advice and guidance on how noise is to be minimised.

To a certain extent, these codes have been supplemented by codes created by private organisations. Some private codes of practice can have a bearing upon the noise level. The Royal Automobile Club organise motor car rallies and include in their code of practice maximum noise levels for such events. If you are affected by noise created by private events, check with the organiser as to the existence of a code a practice and if that code includes noise prevention.

Although codes of practice have no force of law, any breach of the codes can be an indication of the inconsideration of the noise creator. It might be the case that a business premises disregards a code of practice. If this is the case, it might be appropriate to write to the noise creator outlining a breach of the code.

Noise Abatement Zones

The local authority have by virtue of section 63 of the control of pollution Act the power to designate a 'noise abatement zone' in its area. Once designated, the local authority has to measure the noise produced by the Zone. The zone can be anything from an individual factory to an industrial estate. The importance of this measure is that the local authority can determine the noise output for designated premises and new or converted premises in the zone. If the premises exceed the noise output it is an offence. However, the local authority can give consent in writing. The public have the power to inspect the register of noise levels recorded by the local authority. Unfortunately, noise abatement zones have become less and less important as a means to control noise, so be prepared if your local authority tells you that is does not operate any such zones.

Planning Law

Planning law in this country is sometimes regarded as notoriously complex. Nonetheless, planners can have an important bearing upon the noise quality of an area. Noise is an important consideration when plans are determined. To a certain extent the private individual can try to influence the decision of planners. There are two ways you can participate in the planning process: -

Development Plans: The development plan can be considered as the orientation point for all applications for planning permission. It should be emphasised that the development plan is not prescriptive. It only provides guidance on the way an area should be developed. For our purposes, the vast majority of highly urbanised areas are subject to a Unitary Development Plan. (UDP) All metropolitan districts, all London Boroughs and the new unitary authorities established by local government reform in 1995 are required to draw up a UDP. The UDP contains elements of a structure plan drawn up by shire counties and the local plan devised at district level of the county planning authority. Noise should be considered when these plans are formulated.

During the formative stages of the plan, the planning authority is required by law to consult various bodies and such other persons as they consider appropriate. Before the plan is finally drafted, there must be an opportunity afforded to persons who wish to make representations within a period prescribed in regulations made by the secretary of state (six weeks). The planning authority must consider these representations in preparing the draft plan. Once the draft plan is prepared it must be made open to public examination. Objections can then be lodged with the planning authority. The authority then must arrange for a local enquiry or other hearing at which the objectors have a right to appear.

Planning Permission

One of the most daunting experiences of a householder is finding out that a person wishes to develop a piece of land or an existing property nearby and the development will be noisy. As an individual you can play a significant part in the process of planning permission. Planning Permission can have an important bearing on the noisy quality of your area. The planning authority can insert specific conditions relating to noise in the application. So if the developer wishes to build a potentially noisy development the planning authority can impose conditions that seek to minimise the noise. The government has requested local planning authorities to assess the probable impact of noise when planning permission is being considered.

An individual can find out if someone wishes to develop land or change the use of existing premises by looking at the local planning register. In some instances, you might be notified either in person or through the post of new developments that will substantially affect neighbouring property. (In Scotland, any development that is likely to generate noise must be published in the press) You have a legal right to object to any planning permission whether it is on the grounds of noise or any other reason. You must lodge your objection with the local planning authority. There is a right of appeal where planning permission has been denied. So it might take some time for the final decision to be reached.

Human Rights

The Human Rights Act 1997 came into force in autumn 2000. The object of the Act is to incorporate the European Convention on Human Rights, to which the UK is a signatory, into our law. At first instance, one would not consider that such rights might have little to do with noise pollution. However, there is a very important article in the convention that seeks to protect one's family life. Article 8(1) states:

'Everyone has the right to respect for his private and family life, his home And his correspondence.'

The purpose of the Human Rights Act is to protect this and other rights under the convention form the excesses of public authorities. 'Public Authorities' have been defined as a court or tribunal and 'any person certain of whose functions are functions of a public nature.' Even if you feel that a 'public authority' has abused your rights, Article 8(2) provides a salient defence.

There shall be no interference by a public authority with the exercise of this Right except such as in accordance with the laws and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Before you go rushing out asserting your human rights under the Act, with respect to noise pollution Human rights Law is very much in its infancy. The most significant assertion of these rights was in the case of Powell & Rayner v U.K. where two nearby residents challenged the noise created by Heathrow Airport. The airport successfully argued that the airport was of major importance to the functioning of the economy. Since then there has been no cased decided in the European Court of Human Rights where noise pollution has been the single issue. It is very much a case of wait and see if these rights will help the plight of the noise sufferer.

Is the noise a nuisance?

Try to weigh up how much the noise impacts upon your daily life. Does the noise disturb normal domestic activity such as reading a book, listening to music or the pursuit of quite hobbies. Each case is judged on its own merits. A court has to consider the likely reaction of the average reasonable person to the noise. The ringing of church bells, for instance, might be a particular source of nuisance to you. However, the majority of the local community might accept it as a perfectly normal activity.

Are you oversensitive to noise? You have to bear in mind that the people, who make the decisions, a magistrate, for instance, might not be so sensitive to noise. Try to decide if you can tolerate the noise. Remember noise is subjective. You might feel that you cannot tolerate a specific source of noise, say classical music, whereas other people might appreciate it. Remember that the law might not take into account trivial complaints.

If you feel that you need to take some stronger from of action you need to compile some evidence of the noise. Sometimes verbal evidence might not be enough. It is useful to make a daily diary. As soon as the noise occurs enter into the diary - the time, the duration of the noise, what type of noise it is, assess how intrusive the noise. Do you have to wear earplugs or do you have to move rooms? It is important to tell how the noise affects you. Describing your feelings when you hear the noise. Are you unhappy, angry, upset? Does the noise make you physically unwell?

Consider other forms of evidence. A tape recording will give the court some indication of the loudness and type of noise that is being created. A picture is work a thousand words. So they say. If the neighbour creates noise in the open air, such as repairing motorcars, try and photograph the activity. Better still, videotape will provide both sound and vision at the same time of the noise.

In some cases it might be your word against that of the neighbour. Independent evidence is often crucial. Try to obtain evidence from visitors to your home who are subject to the noise. People with some form of officialdom, the police, environmental health officers, who have visited you, might provide some cogent and unequivocal evidence of the noise nuisance. If the noise affects other people, perhaps a group of your neighbours, consider banding together in a joint action against the noise creator. A larger group might make more of an impact upon the authorities than a sole individual.

You must let you neighbour know of your complaint. Tell your neighbour that you intend to take the matter to the authorities. **But a word of caution.** Do not under any circumstances approach your neighbour if you feel that they could be violent. If you do approach them, do so at a reasonable time. The morning is usually better. It is no good warning them in the late evening when they might be intoxicated. It is no good warning them at the time when you are angry or upset. This might only exacerbate matters. If necessary, send a recorded delivery letter to them outlining your complaint. If you have access to a solicitor then a formal warning from your solicitor can have some measured effect. Always retain a copy of your correspondence with the noise creator and any reply. Remember, the noise might be the result of a misunderstanding. If the noise creator understands your position, he or she might modify their behaviour or activity to suit you.

If the noise creator is a business or a bone fide activity then approach the person who is in charge. This might be the licensee of a public house. Profitable businesses are sometimes very sensitive to public complaints. It can have some impact on their public image. Some businesses are answerable to the authorities. Some have to be licensed to operate. So it might be wise to remind the person in charge that there are higher bodies, including the board of directors, which you can complain to.

Make sure all your evidence is presentable. It might be the case that you have to present all your evidence to a solicitor, environmental health officer or to a court. Accurate records shows that you mean business. You have made the effort to record all your observations, so it would show to people that your are determined to fight your case.

If the noise continues, decide which is the most appropriate course of action. Will a solicitor's letter be the solution? Should I call the environmental health department? There are other members of the community who might be in a position to help your cause. A local councillor, for instance, might be sympathetic to environmental issues. Check if your area operates a Mediation Service. They can try to resolve difficulties between parties without the need for legal intervention. But remember, sometimes using a sledgehammer to crack a nut can be most inappropriate. Environmental health officers, for instance, are hard pressed. They are also very conscientious in their approach. But it will do little for their morale if they have to address trivial complaints that can be adequately dealt with by you. You must also address your complaint to the body, which deals with that particular type of noise. It is no good expecting the environmental health department to handle complaints of aircraft noise.

After you have decided which is the most suitable course of action, think of the consequences of legal action. This is now the time to review the whole situation. In some instances, the intervention of the authorities might only make matters worse. It might exacerbate a very tense problem particularly if you intend to take legal action against your next-door neighbour. Remember that you have to live there. You must also consider the cost. Legal action does not come cheap. It might run into hundreds or thousands of pounds with no absolute guarantee of success. I would not want anyone to say after all this advice that I wished I could turn back time. See if your personal or household insurance covers you to take out a private nuisance action under the common law.

How Noise affects you?

The human ear is an incredible organ. It can detect barely audible sounds, such as the rustling of leaves, to sounds, such as a jet engine, which are a million times greater and which can actually physically damage the intricate parts of the inner ear. To asses the intensity of these sounds the decibel scale is used. Mathematically, the scale is logarithmic. So if a sound increases by 10 decibels it is actually doubled in its intensity.

The real problem lies in the fact that our ears are constantly receptive to noise. It does not respect social status. We can all suffer from noise. Even Prince Charles suffered from the regular drones of a neighbour's light aircraft. Unfortunately, there is no volume button on the ear to turn the volume down. So we try to muffle noise by a variety of measures. We might put in earplugs, expensive double-glazing might be installed or we might change our daily habits. It has been known for some people to sleep during the day to get some relief from the nocturnal habits of neighbour's. In some instances, people just simply up sticks and move to a new, more peaceful, environment.

Those who are not in a position to move might have to just put up with the noise. However, the constant hearing of noise can have a pronounced psychological effect on the body. It is the interpretation of sound by the brain, which is the nub of the problem. Sound can stimulate the brain into taking some form of reaction. We hear the telephone so we answer it. The brain thinks the call might be some important information. However, the constant drilling and hammering of your neighbour doing DIY in the early hours of the morning can be interpreted by the brain as annoyance. So we act in some way to these messages. We become unhappy, we become angry, even despair. This in turn causes stress. It not only reduces our quality of

life, noise can harm us. Medical evidence has proven that the human body's reaction hearing unwanted noise could release hormones, which increase our blood pressure, tighten the muscles, and increase saliva levels. All can have a detrimental affect upon those of us who are weak or infirm.

From a social perspective, noise and the resultant stress can bring out the worst in all of us. The blood can boil and infuriation ensues. We would never imagine years ago that noise would induce a violent, even a murderous, reaction. Sadly the press regularly reports on those whose tether has ended and physically attack the noise creator. Some people have literally caused murder when their tolerance has snapped.

How does the decibel scale work?

130-

120-

110--100-

90-

50-

30-

20-

10-0-

The decibel (dB) is a measure of sound intensity; that is, the magnitude of the fluctuations in

air pressure caused by sound waves. The decibel scale is logarithmic, not arithmetic. This means that a doubling of sound intensity is not represented as a doubling of the decibel level. In fact, an increase of iust 3 dB means twice as much sound, and an increase of 10 dB means ten times as much sound.

A sound pressure level of 0 dB represents the threshold of hearing in the most sensitive frequency range of a young, healthy ear, while the thresholds of tickling or painful sensations in the ear occur at about 120 to 130 dB. 60-

Decibels are usually measured with a filter that emphasizes sounds in certain frequencies. The "A" filter (dBA) is the one most frequently 40- . used. The "C" filter (dBC) puts more weight on low-frequency sounds such as the bass in amplified music.

The perception of loudness by the human ear is not directly proportional to the decibel level. For example, a sound 10 dB greater than another is not perceived as being ten times as loud but only about

three times as loud.

Quiet

Very Quies

Toleration Level

The intensity of noise diminishes with distance. Outdoors, and in absence of any close reflecting surface, the effective decibel level diminishes at a rate of 6 dB for each factor of two increase in distance. For example, a sound measuring 100 dB at 10 metres would be 94 dB at 20 metres, 88 dB at 40 metres, and so on.

How loud does noise have to be before it's dangerous?

Because permanent hearing loss is usually a long-term process, it is impossible to know at exactly what point noise becomes loud enough to cause damage to the ears.

The U.S. Environmental Protection Agency has established 70 dBA as a safe average for a 24-hour day. (This figure is based only on the risk to hearing, and does not take into account other health factors such as loss of sleep.) Since sound intensity doubles with every increase of 3 dB, the time of safe exposure would be cut in half with each such increase. Thus a worker should wear ear protection if exposed to a steady 75 dBA for eight hours, 78 dBA for four hours, and so on. Brief exposure to noises of up to 100 dBA is not considered risky provided the average remains within the prescribed levels.

Actual limits for labour tend to be more permissive. In most jurisdictions, workers are permitted to be exposed to up to 85 or even 90 dBA for eight hours. Using the higher of these figures, the sound level in a typical nightclub, 110 dBA, could pose a risk of permanent hearing damage after as little as four minutes of exposure.

Of course, noise is dangerous in other ways too. It can be a cause of stress, illness, suicide, aggression, and violence. As stated above, the volume of noise is only one component in its effect.

Frequent misconceptions.

The legal provisions relating to Statutory Nuisance are contained in the Environmental Protection Act 1990 (Part III) and this act gives local Councils the power to deal with noise as a nuisance. The basic concept of 'nuisance' which is not actually defined anywhere in English law but it can be defined as 'an unlawful act, indirectly causing physical injury to land, or substantially interfering with the enjoyment of interests in land, which is unreasonable in all the circumstances.' Surrounding this definition is a wealth of case law on each of the points contained within it. For most people it is sufficient to know that if you behave unreasonably in making so much noise that you upset your neighbours, you will probably be causing a nuisance. There are a number of common misconceptions held by the public and businesses, about nuisance, such as the following:-

'I was here first, the previous people didn't complain so I'm entitled to carry on as before' - this is not the case, and for good reason. There may have been any number of reasons why the previous occupier did not complain including fear, hearing impairment or even that they were relatives or employees of the person causing the nuisance. The legalese for this situation is that 'it is no defence to claim that the complainant came to the nuisance.'

'I can play my music as loud as I like during the day, it's only at night that I have to keep the volume down.' It is likely that music will be more intrusive at night, but if you play it loud enough it will still cause problems at other times. This principle extends in general to all night time noise - the later it is, the lower the background noise is likely to be, so the more intrusive other noises will be.

'The noise from my neighbours children playing in the garden is a nuisance because I'm a shift worker and need to sleep during the day' - this would be classed as abnormal sensitivity. Just because you have a particular requirement does not mean that your neighbours have to adjust their lives to suit you. If the neighbours are not behaving unreasonably, there cannot be a nuisance.

'It would be too expensive to reduce the noise, so I don't need to' - it is *possible* to claim that you have taken the best practicable means to abate the nuisance, but proving that it is too expensive to do more can be difficult. The courts are much less inclined to accept such statements than they once were and may require expenditure which could push a company into unprofitability.

'The noise from the factory interferes with my enjoyment of walking the footpaths near it.' - the only persons entitled to be heard in a nuisance complaint are those with a legal interest in the land in question. This known as 'locus standii'. Walkers have no legal interest in the footpath, therefore there is no legal case to answer.

'Even after the remedial works have been done, I can still hear the factory, so it must be a nuisance.' - no one is entitled to absolute peace and quiet, and just because a noise is audible does not mean it is automatically a nuisance. If the noise does not *materially* and *significantly* interfere with the enjoyment of land, it is not a nuisance.